CRIMINAL REVISION APPLN. NO. 151 of 1991
to 274 of 1991

CRIMINAL REVISION APPLN. NO. 276 of 1991
to 374 of 1991

CRIMINAL REVISION APPLN. NO. 490 of 1991
to 592 of 1991

CRIMINAL REVISION APPLN. NO. 394 of 1991
{Total 327 Matters}

DATE OF DECISION : 30-12-1993

For Approval and Signature :

THE HON'BLE MR. JUSTICE K.J VAIDYA

CHHATRASINH V PARMAR
OCTROI INSPECTOR
VADODARA MU..

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V.
ARTI TRANSPORT COMPANY
VADODARA & Ors.

1. Whether Reporters of Local Papers may be
allowed to see the judgment ? YES

2. To be referred to the Reporter or not ? YES

3. Whether their Lordships wish to see the fair copy
of the judgment ? NO

4. Whether this case involves a substantial question
of law as to the interpretation of the
Constitution of India, 1950 or

any other order made thereunder ? NO

5. Whether it is to be circulated to the Criminal Courts ? NO

Mr. Giriraj N Desai, the learned Senior Counsel with Mr. Pranav Desai for the Petitioner.
Mr. D.K Trivedi, learned PP for the Respondent-State
Mr. B.T Rao, learned Advocate for Respondents in Criminal Revision Application No. 394 of 1980 only.
In rest of the matters - respondents served.

CORAM : K.J VAIDYA, J.
30-12-1993

ORAL JUDGEMENT

This group of 327 Criminal Revision Applications under Section 397 and 401 of the Criminal Procedure Code, 1973, at the instance of the original Complainant - Mr. Chhatarsinh C Parmar, Octroi Inspector, Vadodara Municipal Corporation, Vadodara is directed against the impugned judgment and order dated 7-9-1990, dismissing the complaints under Section 468 (2) (a) of the Criminal Procedure Code, 1973 rendered seperately in as many criminal cases by the learned J.M.F.C (Muni.), Vadodara, wherein as a result the respondents transport owners who came to be prosecuted for the alleged contravention of the Clause-3 of Standing Orders and Octroi Rules (as stated in detail in the complaints framed under Section 466 (1) (A) (f) and (a)(b) respectively read with Section 398, 468 of the Bombay Municipal Corporations Act, 1949), were ordered to be released.

1.1 Now since the facts-situation and the law of limitation regarding taking cognizance of the offence under Section 468 (2) (a), 470 and 473 of the Code arising in group of these cases being common; except some variations in matters of particulars about the : (a) name and addresses of the concerned accused, (b) type of imported goods in question, (c) date of importing the said goods, (d) issuance of notice to pay octroi duty, etc., at the joint request and with the consent of the learned advocates appearing for the respective parties, it has been so decided to hear and dispose of all these Criminal Revision Applications together by this common judgment.

2. In substance, to briefly narrate the broad facts of all these cases, according to Mr. Chattarsinh Parmar, Octroi Inspector, the respondents herein are the transport owners, doing their respective businesses of transporting goods in

Vadodara City. These respondents on given dates, as set-out in the respective complaints, had imported certain goods in their respective vehicles within the limits of the Vadodara Municipal Corporation, by making palpably false representation before the concerned Octroi Clerk that the same were to be immediately exported from the City limits, and on the basis of the same, they obtained "transit passes" under Clause 3 of the Standing Orders (made by Baroda Municipal Corporation confirmed by the Government vide its Resolution dated 12-3-1970) framed u/s.466 (1)(A)(f) of the Bombay Municipal Corporation Act, 1949 {for short "B.M.C. Act"}. This Clause 3 of the Orders reads as under :-

"(3) Procedure to be followed for exporting the good intended for immediate exportation :- Any person in charge of the goods indended for immediate exportation that are being imported into the Octroi limits of the Municipl Corporation will be bound to convey the said goods from the Import Naka to the Export Naka under the Municipal Supervision in accordance with the conditions and in the manner prescribed below :-

(i) The said goods will have to be exported within six hours from the time of import or such longer period as may be permitted in accordance with provisions contained herein after.

(ii) The said goods will have to be conveyed from the Import Naka to the Export Naka without any change of hands (due to sale or otherwise) or form, condition or appearance by any process of manufacture or otherwise and without their being used Consumed or sold within the octroi limits of the Municipal Corporation.

(iii) The person bringing the goods at the Import Naka shall give a declaration and an undertaking to the Import Naka Karkun in the form prescribed in Scheduled "A", pay the supervision fees prescribed in Schedule "B" and obtain from him a Transit Pass in the form prescribed in Schedule "C".

(iv) After obtaining the Transit Pass he shall proceed to the Export Naka with the said goods in the company of the Municipal Escort provided for this purpose by the routes which are specified in Schedule "G".

(v) After arriving at the concerned Export Naka, he shall after satisfying himself that the goods brought to the Export Naka are the same as those that are noticed in the Transit Pass and that they are brought in accordance with the Conditions prescribed, note the time of export and other necessary details and certify the export of goods on the Transit Pass. He shall thereafter be bound to remove the said goods outside the Octroi limits of the of the Municipal Corporation forthwith. The Transit Pass shall be retained by the Export Naka Karkun, and certificate of the export of material shall be given by the Export Naka Karkun to the Importer on the tripliciate Transit pass. "

Further according to the petitioner, since the respondents herein in contravention of the aforesaid sub-clause (iii) of Clause-3 of the Orders did not transport the imported goods in question out of the Octroi limits, they were liable to pay the octroi duty by virtue of Clause-8 of the Orders which reads as under :-

"(8) If the goods declared at the time of import to be the goods intended for immediate exportation are not conveyed out of the Octroi limits of the Municipal Corporation within the prescribed time of six hours from the time of import or within the time extended by the Export Naka Karkun or if the said goods are not exported in the manner prescribed in the foregoing provisions, the said goods shall for all intends and purposes be deemed as goods imported for use, consumption or sale within the Octroi limits of the Corporation and

(i) Octroi due thereon shall be recovered from the person importing such goods and he shall pay the amount of octroi within 72 hours of the time and date of import.

(ii) If the Octroi is not paid as mentioned in standing order 8 (i) the same shall be recovered as if it is a property tax and recovered in the manner laid down in Chapter (viii) of the Schedule "A" of the Bombay Provincial Municipal Corporations Act, 1949.

(iii) The Deposit amount if paid as per foregoing provisions shall be treated as octroi and the

additional octroi if any will be recovered as per standing order No. 8 (1) and (2) and the person from whom the deposit is received shall alone be deemed to be the importer."

This procedure was also not complied with and accordingly the goods in question ultimately remained goods as having been imported within the municipal limits of Vadodara without paying any octroi duty thereupon. Now this unpaid octroi duty is payable on demand and the procedure prescribed for the same in Clause-11 of Vadodara Municipal Corporation Octroi Rules, 1985, framed under Section 457 (7) read with Section 149 (1) of the B.M.C Act (for short "Octroi Rules") which reads as under :-

"11. Octroi payable on demand :-

(a) Octroi shall be payable on demand.

(b) Every person authorised by the Commissioner to demand octroi shall tender to every person on whom the demand is made a bill specifying the goods taxable, the amount claimed and the rate at which the tax is calculated.

Provided that when any consignment is received in part of parts at different times, the tax shall be levied only in respect of such portion as is actually imported from time to time and not on the whole of the consignment entered in the invoice.

Now, the penalty prescribed for breach of the Standing Orders, etc. etc. is provided in clause 11 of the said Standing Order which reads as under :-

11. Penalty :- Whoever commits a breach of any of the foregoing standing orders or whoever supplies any false information or produces false Transport Pass, Transit Pass or a Deposit Receipt shall be punishable with fine which may extend to Five Hundred Rupees and in the case of continuing breach the offender shall be punishable with fine which may extent to Twenty Rupees for every day during which the breach continues after Conviction for

the first breach.

The aforesaid provision regarding penalty appears to be primarily for the purposes of the departmental proceeedings for recovery of octroi dues from the concerned defaulters. Accordingly, mere recovery of octroi by officers of the Corporation will not absolve concerned defaulters from the criminal prosecution, where the penalty provided under section 398 of the BMC Act reads as under :-

Section 398 - Penalty for evasion of Octroi or toll.

Where any vehicle, animal, or goods imported into the limits of the City are liable to the payment of tool or octroi any person who, with the intention of defrauding the Corporation, causes or abets the introduction of or himself introduces or attempts to introduce within the limits of the City any such vehicle, animal or goods upon which payment of the toll or octroi due on such introduction has neither been made nor tendered, shall, on conviction, be punished with fine which may extend toten times the amount of such toll or octroi or to two hundred and fifty rupees, whichever may be greater.

Similarly, Section 399 provides for the general penalty

which reads as under :-

Section 399 - General Penalty.

Whoever contravenes any provision of this Act or rule, by-law, regulation, standing order, licence, permission or notice issued thereunder or fails to comply with any requisition lawfully made under any such provision shall, if no penalty is provided in any other provision of this Act for such contravention or failure, be punished, for each such offence, with fine which may extend to one hundred rupees and with further fine which may extend to twenty rupees for every day on which such contravention or failure continues after the first conviction.

On the authorities coming to know about the aforesaid default committed by the respondents, notices were issued against them under Rule 16 of the Octroi Rules. The said Rule 16 reads as under :-

(16) Issue of requisition notices :-

If th Commissioner or any other officer authorised in this behalf is of opinion or has reason to believe that it is necessary in the interest of Municipal Revenue to issue a requisition notice as per Form 'B' or in such a form as may be prescribed by the Municipal Commissioner, from time to time may issue the same asking any owner or importer of goods or any person connected with import of goods to return it duly filled in and signed by him within 15 days from the date of receipt of the same. The person, who is required by a written notice so to do, shall fill in correct details and submit a true account of the goods imported by him. The Commissioner or the officer authorised may require of the said person to produce before him any accounts or documents and to furnish any information relating to the import of goods or any other information in connection therewith as may be required together with the copies of abstract from such documents, etc. as appear to him to be necessary. The Octroi duty found due on the information received as per requisition notices or when such information is believed to be incorrect, or such other authentic information as may be obtained, shall immediately, be paid by the said person on demand. If the amount so demanded is not paid on demand, it shall be recovered as if it were tax by process of recovering as provided in Chaper VIII (rules of the Schedule appended to Bombay Provincial Municipal Corporation Act, LIX of 1949).

Explanation

Recovery of octroi by an octroi inspector or the oficer authorised by the Municipal Commissioner from a person who has evaded should not absolve the latter from criminal prosecution under section 398 of The Bombay Provincial Municipal Corporation Act, 1949.

Thereafter even despite issuance of notices, since the respondents failed to bring their Bills/Invoices, etc, etc., in question of the goods imported by them and also having further failed to pay any octroi duty, the Octroi Inspector was constrained to file complaints against all the concerned respondents on 12-2-1988 before the learned J.M.F.C [Muni.] at Vadodara for the alleged contravention of the relevant Standing Orders 3, 8, 12 and Octroi Rule 12 punishable under Sections

468, 398 and 399 of the B.M.C Act etc., etc.

3. On the respondents appearing before the trial Court, they submitted an Application Exh. 5, taking-up the preliminary objection that since the alleged offences were punishable merely with fine only, the complaints regarding the same ought to have been filed within stipulated period of six months as prescribed under Section 468 (2) (a) of the Code, and since that was not done, there being an express bar to take cognizance of the offence, all these complaints deserve to be dismissed and accused be discharged accordingly.

3.1 The aforesaid preliminary objection was opposed by the Octroi Inspector by filing quite an exhaustive written reply at Exh. 6, 9, etc., etc., on the various grounds as stated therein :

3.2 The learned Magistrate thereafter after hearing both the sides while upholding the preliminary objection on the grounds briefly set-out as under, ruled "dismissal" of the complaints as time-barred and accordingly, ordered release of the respondent accused.

(i) That having regard to the facts and circumstances of the relevant octroi rules, since punishment provided is only of fine, the complaints were required to filed within the stipulated period of six months and since the same has not been done, the said complaints in question cannot be entertained.

(ii) That on going through the relevant provisions of the Act and the Standing Order No. 8 and the Octroi Rules, it is not necessary to obtain the sanction. Not only that but for filing the complaint it is not necessary to give notice under the aforesaid provisions. Under the circumstances, the time spent for issuing the notice and obtaining sanction cannot be excluded while computing the period of limitation and in that view of the matter, provision contained in Section 470 (3) is not applicable.

(iii) That taking into consideration the cases which have been referred to in the said chapter, the period of limitation cannot be extended by applying Section 473 of the Code.

(iv) That the complainant had not submitted any application giving explanation for condoning the delay and in that view of the matter also, the period of limitation cannot be extended, as asked for under

Section 473 of the Code.

(v) That the decision of this Court rendered in case of State of Gujarat v/s. Bhavani Industries, 24 (1983) 1, G.L.R p-664 was not applicable to the facts and circumstances of the present cases.

(vi) That the decision of Supreme Court in case of State of Punjab v/s. Swaransingh, 1981 SC p-1054, the same was applicable and in that view of the matter also, complaints deserves to be dismissed.

4. Mr. G.N Desai, the learned Senior Counsel appearing for the petitioner-Octroi Inspector, while challenging all these orders dismissing the complaints, vehemently submitted that the same were ex-facie illegal and perverse and has resulted into a serious miscarriage of justice. Mr. Desai further submitted that none of the aforesaid grounds on which the complaints in question came to be dismissed has any reasonable base which can sustain the close scrutiny at the hands of this Court. Making good this submission, Mr. Desai has in the first instance, submitted that taking into consideration (i) the date of issuance of the demand notice for octroi under Rule-12 and the date on which the complaints actually came to be filed before the learned Magistrate, the same were within the prescribed time-limit of six months. Mr. Desai further urged that in case if this Court was not inclined to accept his above submission then in the alternative, in the second instance, the evasion of octroi duty must be held to be a 'continuing offence' and in that view of the matter, by virtue of Section 472 of the Code, fresh period of limitation begins to run at every moment of time during which the offence continues, and therefore, all the complaints were filed within the statutory time-bound !! and in the third instance, according to Mr. Desai, taking into consideration the fact that the octroi evasion is a white collar economic offence, which day-in and day-out is being committed, defrauding and robbing the Municipal Corporation of its precious public revenue, even if the complaints in question were filed beyond the prescribed period of limitation, then even in the overall interests of justice, the Court must extend the period of limitation and thereby take cognizance of the alleged offence. On the basis of these submissions, it was finally urged by Mr. Desai that since the impugned judgments and orders on face of it were illegal and perverse, the same at once deserve to be quashed and set-aside remanding all these cases to the trial Curt with a direction to restore the same on record and decide the same on merits according to law.

5. As against the above, Mr. B.T Rao, the learned advocate appearing for the respondent vehemently submitted that the reasons given by the learned Magistrate in his impugned judgments and orders while dismissing the complaints are just, legal and proper and therefore the same do not call for any intereference at the hands of this Court. Mr. Rao further submitted that the condonation of delay is a matter and the circumstance which needs seperate special application to be made to the trial Court and that only on making out the 'sufficient grounds' for the same that the delay in question can be condoned. In the instant cases, according to Mr. Rao since the complainant was himself utterly careless and indolent in making the delay condonation application, there was no question of condoning the delay in question arises ! Mr. Rao further submitted that the evasion of octroi duty cannot be said to be 'a continuing offence' by any stretch of imagination. In support of this contention, Mr. Rao has relied upon the decision of this Court rendred in case of M.S Upadhyay Upadhyay v. Mistri Jayantilal Hargovinddas, reported in 1985 G.L.H 860. Further, according to Mr. Rao non-payment of octroi duty cannot be labelled as such a serious economic offence which can constrain any Court to call in aid Section 473 of the Code, to extend the period of limitation, in order to take cognizance of the alleged offence even if it is beyond the prescribed period of limitation. Mr. Rao further submitted that to condone delays in such type of cases would indirectly encourage the remissness, indolence on the part of the public servants in discharge of their duties and accordingly therefore, to avoid bad precedent and even to set them right and make them efficient - by way of an object lesson the delay should not be condoned. Mr. Rao further submitted that if this Court was not inclined to accept the decision rendered in case of M.S Upadhyay v. Mistry Jayantilal Hargovinddas {Supra} then in that case, these matters be referred to the larger bench to settle once and for all the controversy raging around this point of 'continuing offence' ! Mr. Rao further submtited that if such matters are taken lightly, it may unnecessarily give an unjust handle to the public bodies like Vadodara Municipal Corporation, to file complaints leizurely at any point of time which may unnecessarily result into unjust harrassment to the honest citizen !! In this view of the matter, merely because it has been alleged that the offence of evading the octroi duty is an economic offence that by itself is not sufficient ground to take a stern and stringent view of the matter to enhance the period of limitation by resorting to Section 473 of the Code. Mr. Rao further submitted that qua each respondents, Civil Suits infact have been filed for recovery of the Octroi duty and in that view of the matter also, these criminal prosecutions, more particularly when they are belated one, should not be entertained. Mr. Rao on the basis of these

submissions finally urged that since no case was made out to interfere with the impugned judgments and orders, all these revision applications deserve to be dismissed.

6. Now having heard the learned advocates appearing for the respective parties quite at length, at the very outset, it must be stated that the submissions made by Mr. Desai have indeed considerable force, and accordingly therefore, the same merits to be accepted straighway. In fact on taking a close look at the chart (submitted by Mr. Desai) of 327 complaints filed against the respondents wherein case-wise details with regard to (i) date of offence, (ii) date of issuance of transit pass/es, (iii) issuance of notice under Rule-12 of the Octroi Rules, (iv) date of complaints, etc., wherein things have been specifically particularized there is indeed no difficulty in holding that all the complaints were filed within the prescribed period of limitation. From the said chart, taking into consideration the date on which the demand notices under Rule-12 were issued and thereafter when despite the said notices since neither the certificate of export of the goods nor the octroi duty came to be deposited with authorities during the stipulated notice period that it can be said with certainty that the offences of not depositing the transit passes and the non-payment of octroi in question, obtained on the basis of the false representation had taken place ! To understand this, if we look at Sr. No. 1 of the Chart which pertains to Criminal Case No. 916 of 1988 out of which the present Criminal Revision Application No. 151 of 1991 arises, the transit pass was issued on 1-5-1987 and ultimately pursuant to this, since the said Transit Pass were not deposited, on coming to know about this fact of the case, the demand notice was issued against the respondent on 11-11-1987. It was only when accused did not comply with the said notice and accordingly failed to pay the octroi duty due in question that the offence in respect of the same came into light without any doubt whatsoever. Similarly, in other cases also, the date of offence would be not the date on which goods were imported on making false representation but it would be the date on which actually the octroi was demanded by issuing the notices, and yet not deposited with !! Had indeed these goods would have been brought within the Municipal Corporation limits, without false representation of exporting it only, than perhaps the alleged offence of non-payment of octroi duty could certainly be said to have been committed on the date of its import. But then precisely that is not the case here !! In this view of the matter, the learned Magistrate was not right when he took a view that since neither the notice under Rule-12 of the Octroi Rules nor the sanction to prosecute was necessary, the commencement of the period of limitation starts from the date on which goods came to be imported. Now taking into consideration the pressure of work which surrounds the Octroi

Department of the Municipal Corporation viz., continuous issuance of innumberable receipts, preparing challans, transit passes, forwarding the same to the superior officers and then ultimately sending it to the Central Office, the possibilities of such papers being either misplaced or lost in transit or for whatever other reasons not reaching the decision taking authority in time, cannot be ruled out. Under the circumstances, to straighway rush to file complaints on mere apprehensions without exactly ascertaining the true facts in the first place as to whether the transit passes were deposited or not and in the second place, if not deposited whether octroi due has been paid or not would indeed be quite rash, premature, harsh and unjust to the concerned transport-owners and the same indeed does not befit the statutory corporation like the Municipal Corporation !! Precisely, bearing in mind this particular aspect, by issuing notices demanding the octroi, the decision taking authority can ascertain with certainty whether the Transit pass/es are deposited and the certificate of export of goods obtained and if not, the octroi has been paid or not !! Because in case if the transit passes are deposited and in case if not deposited and the octroi is duly paid-up then on the receipt of such notices, the respondents would surely reply accordingly, proving their innocence by producing documentary proof thereof from their record to avoid the prosecution ! In this view of the matter, issuance of notice is absolutely necessary in first hand to determine whether in fact the alleged offences in respect of non-payment of octroi and not depositing the transit passes have taken place or not. No complaint in the Court of Law can ever be filed on the basis of some hunches, apprehensions and inferences without ascertaining the true facts regarding the commission of the alleged offence ! One must clearly understand the basic line of difference between some hunches, general apprehensions and the definite allegations on the basis of which any complaint can lawfully be filed by statutory corporations in cases like the present one !!

6.1 Similarly, the learned Magistrate was not right in saying that there is no need to obtain the sanction for filing the complaints. It is indeed a matter of common knowledge that the Municipal Corporation is a Statutory body, it has its own rules of business. Thus, no person of his/her own sweet will can ever initiate any proceedings, prosecution on behalf of the Municipal Corporation against any citizens before any Court unless of course, it is duly and properly sanctioned and accordingly so authorised. In this view of the matter, even after the detection of the alleged default, before filing the complaints, it is incumbent upon the Octroi Inspector, under the relevant provisions of the rules and law to obtain the necessary sanction to prosecute and this process obviously consumes quite some time !! If these two glaring aspects as

highlighted abovein para 6 & 6.1 are just borne in mind then in view of section 473 of the Code, the facts and circumstances in which delay (if any and at all) took place stands sufficiently self-explained to take the cognizance of the alleged offences ! In this view of the matter, since the learned Magistrate was ex-facie wrong in appreciating the legal position, the impugned order dismissing the complaints on the said grounds falls flat.

7. Further for the sake of argument, even if it be accepted that there was some delay in filing the complaints in respect of the alleged offences, then even, there is no doubt whatsoever that the evasion of octroi duty being a "continuing offence", as provided in Section 472 of the Code, fresh period of limitation would begin at every moment of the time during which the offence continues. The offence of not paying the octroi duty and not depositing the transit pass, in the opinion of this Court is a "continuing offence" because the date on which the goods were imported in fact from that date the octroi becomes due and from that date the Corporation is entitled to recover the interest on it and as long as the same goes on accruing and ultimately unpaid-up, the offence continues. At this stage, the submission of Mr. Rao that in view of the decision reported in case of M.S Upadhyay (supra), the offence in question cannot be said to be continuing offence has no substance. Here also it may be pointed out that there appears to be some error on the part of Mr. Rao in reading the said judgment because the said judgment also does say in para-4, to quote, "..... Now, if non-payment of octroi was made an offence, then certainly we can say that the offence continues till the octroi is paid and that way the offence will be a continuing offence, but Section 192-A (Gujarat Panchayats Act, 1961) penalize the introduction of goods which are liable to the payment of octroi within the octroi limits upon which the payment of octroi due on such introduction has neither been made nor tendered. What is made punishable is not the non-payment of octroi but introduction of goods or animals on which octroi duty though payable is not paid is an offence and that offence is complete as soon as the goods or animals are introduced within the octroi limits....." Reading this part of judgment with the relevant octroi rules clearly indicates that what was alleged against the respondents-accused was non payment of octroi and not the import of goods. Further the word "Octroi" is defined in Section 2 (c) of the B.M.C Act, it means a Cess on the entry of goods into the limits of a city for consumption, use, or sale therein. The reason is goods were not contraband goods which constituted some offence under some Municipal Act or Rules. Everybody is free to import goods provided he is prepared to pay the Octroi duty. In this view of the matter since the facts in case of the M.S Upadhyaya (Supra) are not similar, the same cannot be accepted. Apart this, assuming even for the sake of argument that the decision

rendered in case of M.S Upadhyay (Supra) was applicable with all force to the facts of the present group of matters, then even, it is not necessary to refer to the point to the larger bench as requested by Mr. Rao, as keeping aside the question whether the alleged offences are continuing offence or not, all these matters can be and accordingly has been alternatively allowed on many other points discussed in this judgment.

8. Whether evasion of Octroi duty is an Economic Offence ?
It is of course true that the evasion of the octroi duty is not included within the embrace of the Economic Offences (In-applicability of the Limitation) Act, 1974, which came into force in April, 1974, wherein under Section 2, a schedule is prescribed wherein as many as 20 offences have been catalogued as 'economic offences' and the evasion of the Octroi duty is not so named as economic offence within the list of the sasid economic offence. But then this list of 20 economic offences appended to Section 2 of the said Act is merely illustrative and cannot read as to take in its sweep those offences which though specifically not named as 'economic offence' yet in nature and character of facts constituting the said offence, as an economic offence. But merely because somehow the evasion of the Octroi duty is left out from being mentioned in the said schedule, that by itself never makes it lose its character as an 'economic offence' ! In fact, any offence which ultimately affects the public-revenue to the prejudice of the public exchequer, it is an 'economic offence' and once the same is viewed in the said light, the public interest and justice both warrant that offences involving the evasion of octroi duty should be governed by Section 473 of the Code to be extended the period of limitation in cases the complaints are filed beyond the period of limitation !

9. Further still, it appears that while deciding the present group of Criminal Complaints, the learned Magistrate with due respect has clearly overlooked three commonsense, tale-telling, self-evident circumstances emerging from the facts alleged in the complaint itself viz., firstly, that the evasion of octroi is a white collar chronic economic offence, as it defrauds and robs the Municipal Corporation of its precious public revenue which is utterly indispensable and necessary in the first place to provide and maintain the civic amenities for the people, in the second place to run the huge administration as a whole of the Municipal Corporation and in third place, no Municipality and Panchayat is free from this chronic economic disease of avoiding payment of octroi duties by some persons. Accordingly, the leaned Magsitrate ought to have appreciated as to how indeed without sufficient funds, revenue of which octroi duty forms major chunk/portion and on the basis of which the Municipal Corporation was expected to run its aforesaid show, that is to say if not closed,

efficiently ! For example, to illustrate, the Municipal Corporation as a statutory public welfare body always bears very many heavy responsibility and duties towards the public in providing essential community services like; (i) water-supply, (ii) Bus-services, (iii) fire-brigade, (iv) public roads and streets, (v) lighting of roads and streets, (vi) public privies and urinals, (vii) scavenging and cleaning, (viii) gardens & Zoo (ix) schools, (x) drains and drainage and disposal of sewage, (xi) disposal of carcass and animals, (xii) cremation grounds, (xiii) health, sanitation and hospitals, (xiv) Sports stadium and town halls for cultural activities, and (xv) maintenance and regulation of Markets and slaughter houses, etc., etc. All these services and activities undertaken by Municipal Corporations invariably calls for huge monetary funds to start with and then recurring expenses to maintain them and further to top this, to continuously maintain the staff in thousands to look after the said essential services and activities of Corporation and also to pay pension and service benefits when they retire from their services !! All these needs, means money, nothing else and less than money and its uninterrupted regular inflow ! In fact the Municipal Corporation by itself is as if a mini-State administration. Thus the evasion of the octroi duty by no standards can be viewed in isolation as a light, excusable default, howsoever a smaller be the amount of evasion there be ! Just like a small hole in the bottom of ship cannot be ignored as it can certainly bring about the disasterous end by sinking it if taken lightly !! Similarly, the gravity and seriousness of the alleged offence on non-payment of octroi duty can not to be viewed and measured merely and only from the angle of amount of octroi duty involved and the penalty prescribed for it. For example, in the instant cases, for the alleged offences of evasion of octroi duty what is provided is only some rupees of fine, but then what is required to be further seen is that if the offence is of the type which is of the nature of daily occurrence by number of defaulters and unabatedly going on and on with ingenious schemes and designs to avoid payment of octroi dues if it is not strictly dealt with, what would be its resultant ultimate impact upon the public exchequer of the Corporation is indeed not difficult to imagine ! In fact, as a result of such wide spread and alarmingly increasing offences, if payment of Octroi is ultimately avoided then in that case either the quality and quantity of the public services will be denied, dwindled or minimized to the greatest disadvantage of citizens and/or the Corporation may not have sufficient funds to regularly pay its staff every month !! That in a given case, Octroi amount may be quite small but at the sametime, it is a matter of every one's common knowledge that it is drip by drip and rupee by rupee that the exchequer of the Municipal Corporation is gradually filled up which ultimately is channelized to supply money for the payment of salaries,

maintenance of the city, public welfare activities etc., etc. Can this aspect be ever ignored ? Does it even require in the first instance, to be pleaded by the Municipal Corporation befaced with question of defending period of limitation in filing the Complaint (?) and in the second instance, whether the same is to be streamlined and highlighted by it while praying for endoning delay in filing the complaint ?? Of course, "NO" as how indeed any Court can ever be so myopic in vision, wooden, insensitive and lacking in commonsense to the basic reasonableness and perceptibility of the facts situation to take the judicial notice of the same ? And in the third instance, apart above, it is indeed indisputable that Vadodara is one of the biggest and busiest city not only of the State of Gujarat but also of the Country with hundreds and thousands of vehicles day-in and day-out commuting across the city from all directions, importing and exporting goods in thousands and millions of tones, involving lacs and crores of rupees of octroi duty, through number of Toll Nakas of the City, constraining the Municipal Corporation to engage number of Octroi Clerks attached to the work !! Not only that but numbers of receipt-books, transit passes and some corresponding entries in registers are also required to be made and regularly maintained ! This entire administrative process exerts and involves heavy pressure of work and thick and innumberable bunches of papers from so many Octroi Nakas has to pass through various tables/stages the formidable bottle necks to verify, check and detect if something wrong was committed during the process. This obviously takes considerable time at every table and sometimes in a given case it also gathers dust (!!) because the agency involved to do all these work is human agency quite impersonal and at a time quite slow also and accordingly, by the time, it reaches ultimate decision taking authority, it was bound to cross-across the stipulated period of limitation !! All these papers ultimately are forwarded to the Municipal Authorities sitting in the Central Office to carefully examine and detect the frauds if any of the non-payment of the octroi duty. This is indeed a very hard, difficult and quite cumbersome and time consuming process and thereby a stupendous task wherein by the time any decision is taken by the decision taking authorities, it is bound to quite consume some time, sometimes even more time also ! In fact, the facts discussed and highlighted above are as glaring and clear as Sun in the sky and the light and heat it radiates and throws all-around us for any one to feel its heat, light and presence thereby, unless of course one is unconscious, dead and gone !! Therefore, for any court to understand this, it needs neither any application for the condotion of delay nor any evidence to be lead in support for that purpose to explain and thereby ultimately satisfy the concerned Court regarding the facts and circumstances under which the delay in question came to take place. It is only when the Court unwarrantedly assumes a role

of innocent frog in the well, that it requires to be informed !! In this view of the matter, irrespective of the attending facts and circumstances of that particular case, it is indeed down right - wrong first to insist for an application for delay condonation setting out the facts and circumstances leading to the alleged delay, if any. Evidence is indeed a need only whenever the Court is in dark and doubt to decide any point, but when the attending facts situation and circumstances are more or less gallore, self-eloquent and self-evident of which undoubtedly the judicial notice can be taken and must be taken, there is indeed no need for any such application for delay condonation. Ordinarily, procedure is - a device a bridge, a step which is necessary where the gap is wide-enough which without there being any bridge or the step in between, it is indeed too difficult to cross across and setp-over to have the correct assessment of the fact on the otherside !! But as against this, when in between the gap/delay in question, applying the test of the right minded person or the man of ordinary prudence, attending facts-situation and commonsence, is day light clear there is indeed no necessity upon some written mechnical application to plead and prove the same. In this view of the matter, it is simply strange as to how indeed the learned Magistrate failed to appreciate this simple fact in the first instance that the cases involving evasion of the octroi duty and that too on such a large scale at a time by number of transport-owners can by any strecth of imagination be said to be trivial, insignificant offences and in the second instance, looking to the colossal workload at every Octroi Naka and Central Office, how it can be said that there was any unreasonable delay in filing the complaint in case if at all there was any delay in filing the same, which can be summarily dismissed on the alleged ground of limitation !! Nodoubt, it is quite true that taking into consideration merely myopic one sided view of the picture of the case viz., (i) the facts alleged in the complaint, (ii) the alleged contravention of relevant octroi rules and Standing Orders, (iii) the penalty prescribed for the same being only fine, and (iv) the relevant provision contained in Section 468 (2) (a) of the Code, to any casual onlooker, the same may tempt to give benefit of bar of limitation thereunder to the accused. But this disenchanted, unconcerned attitude is not the way in which degree and extent of its reach on the public interest and in fact, when any Court is called upon to decide the question of limitation, it cannot afford to be unconcerned viewer firstly, ignoring the gravity and seriousness of offence and the degree and extent of its reach on the public interest, in the instant case public revenue and secondly, looking at few words, ripples, bubbles on the water (procedural) surface of Sea (Law) as it must also attempt to guage and find out the depth of water !! Accordingly, it cannot afford to be oblivious to the two important aspects involved in the point viz., in the first

instance, the gravity and seriousness of the offence, in the instant cases the evasion of octroi duty which is practically irreversible, uncontrollable relapsing criminal tendency, a chronic virus eating away the vitals of the public finance of the Municipality and it continues on large or small scale till the Octroi Rules continue !! If this die-hard, obnoxious on-going habit of octroi-theft is taken casually, that only means that the learned Magistrate has lost the judicial perceptibility and in the second instance, provision contained in Section 473 of the Code which calls upon the Court to condone delay and extend the period of limitation to take cognizance of the offence in public interest !!

9. That takes us to the ground No. 4 on which the complainant came to be dismissed. On going through the said judgment of State of Gujarat v. Bhavani Industries (supra), the learned Magistrate has committed patent and obvious error in holding that the same was not applicable to the facts and circumstances of the present cases.

10. Turning to yet another ground viz., the Supreme Court decision rendered in case of State of Punjab v. Swaransingh (Supra) on the basis of which, the learned Magistrate dismissed the complaints, it may be stated that the same having no bearing on the facts of the present case, is of no assistance to the respondents-accused. In fact there cannot be any dispute as regards ratio laid down in the said decision, in the facts and circumstances of that case. Unfortunately, the learned Magistrate was unable to distinguish the difference between the two sets of facts-situation of the alleged offences in cases at hand and one in case before the Supreme Court. In that case offence was under Section 406 only and not one that of not paying the octroi dues which is a serious recurring economic offence for which tdhe Legislature has taken care by providing Section 472, 473 of the Code where it is stated that in case of the 'continuing offence' a fresh period of limitation shall begin to run at every moment of the time during which offence continues and that in a given case, in the interest of justice can be extended ! Not only that but the facts and circumstances of the S.C were too simple where Section 473 of the Code can have hardly any say to extend the period of limitation unlike the present group of cases where Section 473 of Code is immediately applicable !

11. Apart aforesaid discussion, on carefully examining the complaints in all these matters, it is indeed significant to note that they appear to have been filed only for the alleged default of not returning the Transit pass/es as warranted by Clause 3 of the Standing Order and in turn accordingly also for not paying up the octroi dues under the relevant standing

orders and the octroi rules which are punishable under the Vadodara Muncipal Corporation Act, blissfully ignoring altogether that the very same facts and circumstances alleged in all these complaints also simultaneously prima facie constitutes offence punishable under Sections 175, 176, 177, 199, 200, 403, 406, 415 and 420 of the Indian Penal Code.

11.1 Section 175 of the I. P Code pertains to intentionally omitting to produce a document to a public servant by a person legally bound to produce or deliver such document, for which the sentence provided is simple imprisonment of one month or fine of Rs. 500/- or both. Section 176 pertains to intentionally omitting to give notice or information to a public servant by a person legally bound to give such notice or information, for which the punishment provided is simple imprisonment for one month or fine of Rs. 500/- or both. Section 177 pertains to knowingly furnishing false information to a public servant, for which the punishment provided is imprisonment for a period of six months or fine of Rs. 1,000/= or both. Section 199 pertains to false statement made in any declaration which is by law receivable as evidence and for which punishment provided is imprisonment for seven years and fine. Section 403 pertains to dishonest misappropriation of the property, for which the punishment provided in Sec. 406 is imprisonment for a term which may extend to two years or with fine, or with both. Section 406 pertains to punishment for criminal breach of trust, for which the punishment provided is imprisonment for a term which may extend to three years, or with fine, or with both. Section 415 and 420 pertains to cheating and thereby dishonestly inducing delivery of property, or making alteration or destruction of a valuable security and for which sentence provided is imprisonment for seven years and fine. Thus taking into consideration the aforesaid offences under the Indian Penal Code and the punishment provided for the same, the period of limitation would not be restricted to six months only as provided under Section 468 (2) (a) of the Code but the same would fall within the ambit of Section 468 (2) (b) and 468 (2) (c) of the Code having more period of limitation. This is quite clear moment we look at the Section 468, which reads as under :-

Section 468 - Bar to taking cognizance after lapse of the period of limitation.

(1) Except as otherwise provided elsewhere in this Code, no court shall take cognizance of an offence of the category specified in sub-section (2), after the expiry of the period of

limitation.

(2) The period of limitation shall be -

(a) six months, if the offence is punishable with fine only;

(b) one year, if the offence is punishable with imprisonment for a term not exceeding one year;

(c) three years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years.

(3) For the purpose of this Section, the period of limitation, in relation to offences which may be tried together, shall be determined with reference to the offence which is punishable with the more severe punishment or, as the case may be, the most severe punishment.

When all these cases are examined from this stand point the same being offenes under the I.P Code as well, there is no question of limitation that arises in the present cases, as all cases are filed within the prescribed statutory period of limitation. It is unfortunate that the complainant has lost-sight of this aspect of the cases where the respondent-accused are liable to be prima facie tried for the alleged offences under the I.P. Code. The learned Magistrate in this view of the matter is directed to suitably add the alleged offences under the I.P. Code after hearing both the sides.

11.2 Apart this case, in other such cases also, even if the complainant for whatever reason has failed to pray the Court to punish the accused for the alleged offences under the relevant sections of IPC, nonetheless it shall be the duty of the concerned learned Magistrate of his own to see the relevant offences under the IPC are added and accordingly the accused is punished if the offence is brought home.

12. Now turning to the next argument of Mr. Rao that some suits are filed against the present respondents for the recovery of the octroi duty, regarding which the complaints have been filed and are pointed out to be time-barred, that by itself is hardly a ground to discard the criminal prosecution as criminal complaints stand entirely on different and its own footings on the basis of contravention of rules constituting Criminal offences as stated above. When that is permissible, the complaint can be filed and merley because the said suit is filed that cannot debar the complaintant to file the criminal complaints against the respondent-accused before the learned

Magistrate.

12.1 In view of the aforesaid discussion, in the first place, it is indeed very clear that all complaints are filed within the stipulated period of limitation of six months. Apart this, remotely even, in case if this Court was to hold that there was some delay, in the filing the complaints then even, taking into consideration the robust common sense view of the entire circumstances attending all these cases, it must be said with more than certainty that the alleged offences being 'Economic and continuing offences' also, in very nature of the facts and circumstances of the case, they indeed quite satisfactorily explain the delay in question as warranted under Sections 472 and 473 of the Code, to deserve the cognizance of the same being taken. Still further, apart taking into consideration the facts alleged in the complaint also constitute offences under the I.P Code.

12.2 In this view of the matter, since the grievance voiced by the learned Advocate Mr. Desai is found to be absolutely justified, it is required to be held that the impugned judgments and orders passed by the learned Magistrate discharging the accused on face of it being illegal and unjust, the same deserves to be quashed and set-aside and accordingly, these cases are remanded to the trial Court to be disposed off on merit, according to law, more particularly, in the light of the observations made in above para 11.1 of this judgment.

13. In the result, this group of 327 criminal revision application is allowed. In all these cases, the impugned judgment and orders discharging the accused, passed by the learned JMFC (Muni.), Vadodara are hereby quashed and set-aside, and that the cases under these revision applications are ordered to be remanded with a direction to restore all complaints on record and proceed with the case and decide the same on merits, according to law; especially in the light of decision of this Court rendered in the case of State of Gujarat versus Dr. C.K Patel, reported in (1991) 2, GLH p-354. It is further directed that the Complainant or his successor shall remaim present on 28-2-1994 before the learned JMFC, Baroda and take appropriate date for proceeding the matters and will co-operate with the learned JMFC in disposing of the same as expeditiously as possible. After the date is fixed, the notice to the respondents shall be served through the Complainant with the help of Police authorities of the concerned areas. By chance, if that fails, it is hardly required to be told that it will be open to the Court to get it served in any other manner permitted under the Criminal Procedure Code.

14. The Registrar is directed to forward a copy of this judgment to the Secretary, Legal Department, Gandhinagar with a

request to immediately forward the same to the concerned Secretary incharge of the Municipality with a request to circulate the same to the (i) Municipal Commissioners (Legal Section) of the Municipal Corporations of the State, and (ii) Chief Officers of the Municipalities of the State, for information.

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Prakash*